

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FOX RENT-A-CAR

and

Case 12-CA-186537

TEAMSTERS LOCAL UNION NO. 769

ORDER

The Employer's Petition to Revoke subpoena duces tecum B-1-737436 is denied. The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).¹

Dated, Washington, D.C., April 19, 2017.

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

¹ In considering the petition to revoke, we have evaluated the subpoena in light of the Region's statement that to the extent that the subpoena could be read to seek all documents that contain the Levins' telephone numbers and addresses, the Region amends the subpoena to request only the rental agreement in effect about October 11, 2016, or any other document, that reflects their telephone number(s) or address(es). Contrary to our dissenting colleague's assumption, the Region's modification of the subpoena does not establish that the subpoena initially was overbroad, and we find that it was not. Instead, it appears that the Region's modification is designed to promote efficiency in obtaining from the Employer the information that the Region needs for its investigation.

ACTING CHAIRMAN MISCIMARRA, dissenting.

I respectfully dissent from the Board majority's denial of the petition to revoke the subpoena, which requests "[a]ll documents that will show contact information (phone number(s) and address(es)) for customers Brad Levin and Dolores Levin." Given the Region's stated basis for this request (that it merely desires the addresses or phone numbers for these two customers), I believe requests seeking all documents containing contact information for these customers are clearly overbroad and contrary to the Board's own guidelines for such requests in NLRB Casehandling Manual (Part One) Unfair Labor Practice Proceedings Sec. 11776. When subpoena requests are overly broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, I believe it is more appropriate for the Board to grant the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on changes that were communicated only after the petition to revoke is under consideration by the Board. To its credit, the Region has now indicated that it amends the subpoena to request only the rental agreement in effect about October 11, 2016, or any other document, that reflects their telephone number(s) or address(es) for customers Brad Levin and Dolores Levin. However, I disagree with the Board's practice that often permits an overly broad subpoena request to be clarified or amended by the Region after a party has filed a meritorious petition to revoke, which then prompts the Board to deny the petition. In my view, this practice encourages the issuance of subpoenas that are not appropriately tailored to matters under investigation, which in turn needlessly leads to Board intervention in many subpoena disputes that could have been avoided had the subpoena requests been crafted in a manner that appropriately conforms

to matters relevant to the charge. Additionally, I believe this practice creates the appearance of unfairness by permitting one side (the Region's attorneys, who are representatives of the General Counsel) to avoid having a subpoena revoked by making an after-the-fact "change" that is communicated in briefing. See Sec. 11(1) of the Act (stating the Board "shall revoke" any subpoena where "the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required").

Therefore, contrary to the majority's statement that the Region's amendment served "merely to promote efficiency in obtaining from the Employer the information that the Region needs for its investigation," I believe these efforts must be undertaken before disputes regarding a subpoena's scope are presented to the Board in a party's petition to revoke. Accordingly, I would grant the petition to revoke, without prejudice to the potential issuance of a new subpoena that is appropriate in scope, subject to applicable time limits and other requirements set forth in the Act and the Board's Rules and Regulations.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN